

ISSUES

- (1) Whether the Workers Compensation Appeals Board has jurisdiction to review the Administrative Law Judge's Order entered herein.
- (2) If the Appeals Board has jurisdiction to hear this appeal, whether claimant is entitled to temporary total disability benefits for the period of June 22, 1993, to September 13, 1993.

RECORD

- (1) The documents filed of record with the Division in this docketed matter, including the transcript of preliminary hearing before Administrative Law Judge John D. Clark dated December 2, 1993, and the exhibits attached thereto.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purpose of preliminary hearing, the Appeals Board finds:

- (1) Section 53(b)(2)(A) of the 1993 Session Laws of Kansas, Chapter 286, provides that the Workers Compensation Appeals Board shall not conduct a review of a preliminary hearing award unless it is alleged that the Administrative Law Judge exceeded his authority in granting or denying the relief requested. Section 49(a)(2) of the 1993 Session Laws of Kansas, Chapter 286, provides that a finding made at a preliminary hearing with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional and subject to review by the Board.

In the case at hand the issue before the Administrative Law Judge was whether claimant was temporarily and totally disabled during the period of June 22, 1993 to September 13, 1993, considering his medical condition and the alleged existence of accommodated employment. The question before the Administrative Law Judge was not one of the issues enumerated in Section 49 of the 1993 Session Laws cited above. Therefore, before the Appeals Board can exercise jurisdiction over this proceeding, it must be established that the Administrative Law Judge exceeded his authority.

- (2) Section 49(a)(2) of the 1993 Session Laws of Kansas, Chapter 286, provides that upon a preliminary finding that the injury to the employee is compensable, the Administrative Law Judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim. Therefore, the Administrative Law Judge is specifically empowered at preliminary hearing to grant or deny temporary total disability benefits.

As the Administrative Law Judge has not exceeded his authority in granting temporary total disability benefits, and as the issue at preliminary hearing is not one enumerated in Section 49 as being jurisdictional, this Appeals Board lacks jurisdiction of this review.

WHEREFORE, it is the finding, decision and order of this Appeals Board that it does not have jurisdiction to review the Order of Administrative Law Judge John D. Clark, dated

December 6, 1993, and said Order remains in force and effect.

IT IS SO ORDERED.

Dated and mailed this ____ day of January, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: John D. Clark, Administrative Law Judge
Fred Spigarelli, P.O. Box 1449, Pittsburg, Kansas 66762
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George Gomez, Director